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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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WB MUSIC CORP., MOTHER CULTURE      :
PUBLISHING, SONY/ATV CROSS KEYS      :      Civil Action
PUBLISHING, INC., EMI WATERFORD      :      No.
MUSIC, INC., WEBO GIRL PUBLISHING,   :
HIDEOUT RECORDS AND DISTRIBUTORS,    :
INC. (GEAR PUBLISHING DIVISION),     :
GNAT BOOTY MUSIC, SMELLY SONGS AND   :
ZOMBA ENTERPRISES, INC.,             :
                                      :      COMPLAINT
                                      :
          Plaintiffs,                 :
                                      :
    -against-                         :
                                      :
JAY KAY JAY, INC. AND KATHLEEN A.    :
TARTIVITA,                           :
                                      :
          Defendants.                 :
                                      :
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Plaintiffs, complaining of the Defendants, by SCHUMANN
HANLON LLC, their attorneys, allege:

1. This is a suit for copyright infringement under
Title 17, U.S.C. Jurisdiction of this Court is based upon Title
28, U.S.C., Section 1338(a).

2. Plaintiffs allege fourteen (14) causes of action
for copyright infringement based on the Defendants' public per-

formances of copyrighted musical compositions. SCHEDULE A annexed to the Complaint sets forth in summary form the allegations hereinafter made with respect to the Plaintiffs, their copyrighted musical compositions, and Defendants' acts of infringement.

3. Plaintiffs named in Column 2 (all references to columns are to columns in SCHEDULE A) are the owners of the copyrights in the works listed in Column 3, and are properly joined in this complaint under Rule 20, Fed. R. Civ. P.

4. Defendant Jay Kay Jay, Inc. is a New Jersey corporation which did at the times hereinafter mentioned and still does own, control, manage, operate and maintain a place of business for public entertainment, accommodation, amusement and refreshment known as Pumps Plus, located at 77 State Route 36 W, in Keansburg, in the State of New Jersey.

5. Defendant Kathleen A. Tartivita is a resident of this District and, at all times hereinafter mentioned was and still is President of Defendant Jay Kay Jay, Inc., with primary responsibility for the control, management, operation and maintenance of the affairs of said corporation. The acts hereinafter complained of were done with her active assistance, cooperation, acquiescence and procurement, and she derives financial benefit therefrom.

6. Musical compositions were and are publicly per-

formed at said place of business.

7. The original musical compositions listed in Column 3 were created and written by the persons named in Column 4.

8. Each composition was published on the date stated in Column 5, and since the date of publication has been printed and published in strict conformity with Title 17, U.S.C.

9. The Plaintiffs named in each cause of action, including their predecessors in interest, if any, complied in all respects with Title 17, U.S.C., and secured the exclusive rights and privileges in and to the copyright of each composition listed in Column 3, and received from the Register of Copyrights a Certificate of Registration, identified as set forth in Column 6.

10. Defendants on the dates specified in Column 7, and upon information and belief, at other times prior and subsequent thereto, infringed the copyright in each composition named in Column 3 by giving public performances of the compositions on Defendants' premises, for the entertainment and amusement of the patrons attending said premises, and Defendants threaten to continue such infringing performances.

11. The performances of the Plaintiffs' copyrighted musical compositions on the dates specified in Column 7 on Defendants' premises were unauthorized: neither Defendants, nor any of the Defendants' agents, servants or employees, nor any performer was licensed by, or otherwise received permission from

any Plaintiff or any agent, servant or employee of any Plaintiff to give such performances.

12. In undertaking the conduct complained of in this action, Defendants knowingly and intentionally violated Plaintiffs' rights. Defendants' knowledge and intent are established by the following facts:

(a) For periods prior to April 1, 2004, Defendants held a license agreement from the American Society of Composers, Authors and Publishers (ASCAP), the performing rights licensing organization of which all Plaintiffs are members. That license agreement authorized public performance of any or all of hundreds of thousands of copyrighted musical compositions in the ASCAP repertoire at Pumps Plus. In return for their license, Defendants agreed to pay license fees to ASCAP.

(b) Defendants, however, failed to pay license fees as required by the license agreement, and, as a result, ASCAP duly terminated Defendants' license agreement for default, effective April 1, 2004. Last year, evidence of Defendants' infringing performance was obtained and an action by ASCAP members for copyright infringement against Defendants, virtually identical to the current action, was filed. That action, Gnat Booty Music, et al. v. Jay Kay Jay, Inc. and Kathleen A. Tartivita, Civil Action No. 3:06-cv-5522 (GEB) (filed November 17, 2006), is still pending.

(c) Despite ASCAP's licensing efforts and the pendency of the Gnat Booty action, Defendants have continued to perform copyrighted music without permission during the hours that Defendants' establishment is open to the public for business and presenting musical entertainment.

(d) The many unauthorized performances at Pumps Plus include the performances of the fourteen copyrighted musical compositions upon which this action is based.

13. At the times of the acts of infringement complained of, the Plaintiff named in each cause of action was the owner of the copyright in the composition therein named.

14. The said wrongful acts of the Defendants have caused and are causing great injury to the Plaintiffs, which damage cannot be accurately computed, and unless this Court restrains the Defendants from the further commission of said acts, said Plaintiffs will suffer irreparable injury, for all of which the said Plaintiffs are without any adequate remedy at law.

WHEREFORE, Plaintiffs pray:

I. That Defendants and all persons acting under the direction, control, permission or authority of Defendants be enjoined and restrained permanently from publicly performing the aforementioned compositions or any of them and from causing or permitting the said compositions to be publicly performed in Defendants' said premises, or in any place owned, controlled or

conducted by Defendants, and from aiding or abetting the public performance of such compositions in any such place or otherwise.

II. That Defendants be decreed to pay such statutory damages as to the Court shall appear just, as specified in 17 U.S.C. § 504(c)(1), namely, not more than One Hundred Fifty Thousand Dollars (\$150,000) nor less than Seven Hundred And Fifty Dollars (\$750) in each cause of action herein.

III. That Defendants be decreed to pay the costs of this action and that a reasonable attorney's fee be allowed as part of the costs.

IV. For such other and further relief as may be just and equitable.

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By



David K. DeLonge (DD9662)

Dated: *July 23, 2007*

Columns	1	2	3	4	5	6	7
Cause of Action	Plaintiff	Musical Composition	Writers	Date of Publication	Certificate of Registration Number	Date of Known Infringe- ment	
1.	WB MUSIC CORP., MOTHER CULTURE PUBLISHING	VOICES	MIKE WENGEREN, DAN DONEGAN, DAVID DRAIMAN, STEVE "FUZZ" KMAK	3/7/00	PA 1-000-622	5/30/07	
2.	WB MUSIC CORP., MOTHER CULTURE PUBLISHING	THE GAME	MIKE WENGEREN, DAN DONEGAN, DAVID DRAIMAN	3/7/00	PA 1-000-622	5/30/07	
3.	WB MUSIC CORP., MOTHER CULTURE PUBLISHING	STUPIDY	MIKE WENGEREN, DAN DONEGAN, DAVID DRAIMAN, STEVE "FUZZ" KMAK	3/7/00	PA 1-000-622	5/30/07	
4.	WB MUSIC CORP.	DOWN WITH THE SICKNESS	MIKE WENGEREN, DAVID DRAIMAN, DAN DONEGAN, STEVE "FUZZ" KMAK	3/7/00	PA 1-000-622	5/30/07	
5.	WB MUSIC CORP., MOTHER CULTURE PUBLISHING	VIOLENCE FETISH	MIKE WENGEREN, DAN DONEGAN, DAVID DRAIMAN, STEVE "FUZZ" KMAK	3/7/00	PA 1-000-622	5/30/07	
6.	WB MUSIC CORP., MOTHER CULTURE PUBLISHING	FEAR	MIKE WENGEREN, DAN DONEGAN, DAVID DRAIMAN, STEVE "FUZZ" KMAK	3/7/00	PA 1-000-622	5/30/07	

SCHEDULE "A"

1	2	3	4	5	6	7
Columns						
Cause of Action	Plaintiff	Musical Composition	Writers	Date of Publication	Certificate of Registration Number	Date of Known Infringe- ment
7.	WB MUSIC CORP., MOTHER CULTURE PUBLISHING	NUMB	MIKE MENGREN, DAN DONEGAN, DAVID DRAIMAN, STEVE "FUZZ" KMAK	3/7/00	PA 1-000-622	5/30/07
8.	WB MUSIC CORP., MOTHER CULTURE PUBLISHING	CONFLICT	MIKE MENGREN, DAN DONEGAN, DAVID DRAIMAN, STEVE "FUZZ" KMAK	3/7/00	PA 1-000-622	5/30/07
9.	WB MUSIC CORP., SONY/ATV CROSS KEYS PUBLISHING CO., INC.	REDNECK WOMAN	JOHN RICH, GRETCHEN WILSON	5/11/04	PA 1-224-618	5/30/07
10.	WB MUSIC CORP., WEBB GIRL PUBLISHING INC., EMI WATERFORD MUSIC, INC.	HUNG UP	MADONNA LOUISE CICCONE, STUART PRICE	11/15/05	PA 1-162-837	5/30/07
11.	WEBB GIRL PUBLISHING, INC.	SORRY	MADONNA, STUART PRICE	11/15/05	PA 1-300-458	5/30/07
12.	HIDEOUT RECORDS AND DISTRIBUTORS, INC. (GEAR PUBLISHING DIVISION)	YOU'LL ACCOMP'NY ME	BOB SEGER	2/25/80	PA 74-936	5/30/07

SCHEDULE "A"

1 Cause of Action	2 Plaintiff	3 Musical Composition	4 Writers	5 Date of Publication	6 Certificate of Registration Number	7 Date of Known Infringe- ment
13.	GNAT BOOTY MUSIC	HEY YAI	ANDRE BENJAMIN	9/23/03	PA 1-222-527	5/30/07
14.	SMELLY SONGS, ZOMBA ENTERPRISES, INC.	BEHIND THESE HAZEL EYES	KELLY CLARKSON, LUKASZ GOTTFELD, MARTIN SANDBERG	11/30/04	PA-1-161-121	5/30/07

SCHEDULE "A"